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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1965.

MOBIL OIL COMPANY, A DIVISION OF SOCONY MOBIL OIL COMPANY, INC., a Corporation,
Petitioner,

vs.

LOCAL 7-644 OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO, a Voluntary Unincorporated Association,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

BRIEF

For Respondent, Local 7-644, Oil, Chemical and Atomic Workers International Union, AFL-CIO in Opposition.

HAROLD GRUENBERG,
Suite 905, Chemical Building,
721 Olive Street,
St. Louis, Missouri 63101,
JOHN M. SCHOBEL,
Suite 905, Chemical Building,
721 Olive Street,
St. Louis, Missouri 63101,
Attorneys for Local 7-644, Oil, Chemical and Atomic Workers International Union, AFL-CIO.

GRUENBERG, SCHOBEL & SOUDERS,
Of Counsel.

St. Louis Law Printing Co., Inc., 415 N. Eighth Street. CEntral 1-4477.

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OPINIONS BELOW.

The opinion of the Court of Appeals is reported at 350 F. 2d 708. The opinion of the District Court is set forth in the appendix record Petitioner filed with its petition.[1]

[1] Petitioner cited the appendix record as "Ap. R.". The same citation is used by respondent in this Brief in Opposition.

JURISDICTION.

The Court of Appeals entered its judgment on July 29, 1965, and denied a petition for re-hearing on September 9, 1965. The petition for certiorari was filed on December 6, 1965. The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254 (1).

QUESTION PRESENTED.

Whether the decision of the Court of Appeals for the Seventh Circuit in reversing the District Court and upholding and enforcing the arbitrator's award was within the authority of the Court of Appeals?

STATUTE INVOLVED.

Section 301 (a) of the Labor Management Relations Act, as amended, 61 Stat. 156, 29 U. S. C., Section 185 (a) provides:

> "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

STATEMENT.

1. Nature of the Case and Disposition.

Complaint was filed by Respondent Union[2] against Petitioner Company[3] seeking enforcement of an arbitration award in the United States District Court for the Eastern District of Illinois under Section 301 (a) of the Labor Management Relations Act, 29 U. S. C., Section 185 (a). The District Court issued an order denying enforcement of the award and entered judgment for the Petitioner. Respondent appealed to the United States Court of Appeals for the Seventh Circuit. The Seventh Circuit reversed the judgment of the District Court, finding that the award of the arbitrator was not arbitrary, that the arbitrator did not exceed his authority, and that the arbitrator's award was based upon the collective bargaining agreement of the parties.

2. The Facts.

The Union and the Company, after an economic strike of approximately six months duration, executed a collective bargaining agreement on February 4, 1963. Article XIV of said agreement provided for the filing of grievances and arbitration (Ap. R. 4). On March 14, 1963, the Union filed a grievance alleging that the Company had violated Article XII of the collective bargaining agreement in that Defendant had reduced by one-half the 1963 vacations for all employees covered by said agreement (Ap. R. 2). Pursuant to Article XIV, Arbitrator Carroll R. Daugherty was selected by the Union and the Company from a panel obtained from the Federal

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[2] Respondent will hereafter be designated as Union in this Brief.

[3] Petitioner will hereafter be referred to as Company in this Brief.

Mediation and Conciliation Service. Said Article XIV provided that the decision of the arbitrator shall be conclusive and binding on both parties (Ap. R. 4).

On August 24, 1963, a hearing on this grievance was held before Arbitrator Daugherty. At the hearing representatives of the Union and the Company submitted the following stipulated issue for determination by the arbitrator (Ap. R. 50):

> "Did the Company violate the controlling agreement(s) in the manner in which it applied the vacation provisions thereof to the 1963 vacations of employees in the bargaining unit? If so, what remedy is proper?"

On October 21, 1963, Arbitrator Daugherty issued his Opinion and Findings remanding to the Union and the Company for attempted resolution by them the sole question as to whether or not the Company had an "established plan" under Article XII of the collective bargaining agreement for a designated number of days or hours to be worked to entitle an employee to a vacation[4] (Ap. R. 30).

The Company and the Union were unable to resolve the sole question of fact presented by the arbitrator, and on January 24, 1964, a supplemental hearing was held by Arbitrator Daugherty. The arbitrator advised the Company and the Union that the only testimony and argument he would entertain was with reference to the

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[4] The Company in its petition for writ of certiorari to this Court on page 5 asserts that the arbitrator directed "the Company and the Union to examine his Opinion and to endeavor to resolve the back-to-work agreement issue between them. . . ." The Opinion of the arbitrator clearly states that the sole issue of fact for attempted resolution by the Company and the Union was whether or not there was an "established plan". The Opinion of the arbitrator did not, as the Company incorrectly asserts, remand to the parties any fact question on the issue of the back-to-work agreement.

existence or non-existence of an "established plan" for vacation eligibility in connection with Article XII of the collective bargaining agreement (Ap. R. 46).

The arbitrator issued his Final Opinion and Findings dated February 17, 1964, in which he held that the Company had violated the collective bargaining agreement by reducing the vacation benefits of all employees for 1963 by one-half because of the economic strike. The arbitrator directed the Company to "pay to each of its employees here properly involved any difference between what it actually did pay him for his 1963 vacation and what it should have paid him under both the rulings set forth just below under Award" (Ap. R. 49).

3. **Decisions Below.**

a. **District Court.**

The District Court held that the arbitrator's award was arbitrary, capricious and not "adequately" grounded in the basic collective bargaining contract and denied enforcement of the arbitrator's award (Ap. R. 76). The District Court in its Opinion erroneously found that the question submitted to the arbitrator "was whether or not there was a back to work agreement and whether or not under it the plaintiffs (sic) were to receive full vacation pay on a reduced basis as outlined in Paragraph (b) of the Lutz letter" (Ap. R. 74). The District Court's finding with respect to the issue is in conflict with the stipulated issue before the arbitrator which stipulated issue is set forth in the opinion of the District Court as follows (Ap. R. 23, 50):

> "Did the Company violate the controlling agreement(s) in the manner in which it applied the vacation provisions thereof to the 1963 vacations of employees in the bargaining unit? If so, what remedy is proper?"

b. Court of Appeals.

The Court of Appeals by majority decision reversed the District Court, finding that the arbitrator "was fully cognizant of the issue presented to him for decision" and that the arbitrator "did not go beyond the scope of his authority in rendering his award" (Pet. A. 19).[5] The Court of Appeals held that the District Court had erred in concluding that the issue was confined to the back to work agreement and found that the issue before the arbitrator was whether the Company had violated the "controlling agreement(s)" with respect to the 1963 vacations and that the term "controlling agreement(s)" included the "new collective bargaining contract as well as any back to work agreement" (Pet. A. 19, 20). The Court of Appeals determined there was "nothing in the record to indicate that the award was arbitrary or that the arbitrator exceeded his authority" (Pet. A. 20).

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[5] Reference is made to the Appendix attached to the Petition for Writ of Certiorari.

ARGUMENT.

The Company urges this Court to grant a writ of certiorari and contends that the decision of the Court of Appeals for the Seventh Circuit in this case is in conflict with the decision of the Court of Appeals for the Fourth Circuit in **Textile Workers Union of America v. American Thread Company,** 291 F. 2d 894 (1961). The Company further contends that there is ambiguity and misunderstanding among the courts of appeals with reference to the question of what standard a reviewing court is to apply in determining the validity of an arbitration award. The Union submits that both contentions are without merit.

1. The Decision of the Court Below Is Not in Conflict With the Decision of the Court of Appeals for the Fourth Circuit in Textile Workers of America v. American Thread Company, 291 F. 2d 894 (1961).

In the **American Thread Company** case the Court of Appeals for the Fourth Circuit found that the arbitrator had exceeded his authority under **both** the collective bargaining agreement and the submission agreement when he undertook to decide the question of the "appropriateness of the employers' consistent disciplinary practice". The Fourth Circuit at page 900 stated:

> "Neither the contract nor the submission gave the arbitrator any right to disregard established disciplinary practices, consistently applied, and to dispense his own brand of industrial justice".

The majority of the Fourth Circuit then went on to say, l. c. 901:

> "Thus, in aid of his search for justification of his action the arbitrator manifested a disregard for the terms of the submission and a determination to exceed,

if necessary, the limits of the authority and power conferred upon him. This we cannot approve".

There is no conflict between the decision of the Fourth Circuit in the **American Thread** case and the decision of the Court of Appeals for the Seventh Circuit in the instant case.

The majority of the Seventh Circuit, in its opinion, pointed out that the arbitrator was acting within his authority under the stipulated submission agreement presented to him by the parties at the arbitration hearing. The Seventh Circuit recognized that the District Court had erred when it found that the arbitrator had made a new contract for the parties and further erred because the "district judge was of the view that the arbitrator had made a new contract for the parties and that the sole question for arbitration was whether there was a back to work agreement whereby the employees were to receive vacation pay on a reduced basis as outlined in the Lutz letter" (Pet. A. 18, 19).

In its opinion the Seventh Circuit noted the erroneous conclusions of the District Court with reference to the employer-employee relationship when a work stoppage occurs. The Seventh Circuit stated (Pet. A. 19):

> "The district court failed to recognize that absence from work because of an economic strike does not constitute a termination of the employer-employee relationship and does not vitiate the continuous service of an employee. The arbitrator, on the other hand, took the position that the employees 'had not lost their agreement rights by the time they had returned to work' simply because they had performed no work during the strike. In other words, the arbitrator recognized that employees who engage in a lawful economic strike may retain full vacation benefits, gained in part under a terminated contract and in part during

the period of the strike, if the new contract executed is susceptible of such interpretation."

The Seventh Circuit concluded (Pet. A. 19, 20):

"The opinion of the arbitrator indicates that he was fully cognizant of the issue presented to him for decision and that he did not go beyond the scope of his authority in rendering his award. The issue was not confined, as the district judge thought, to whether the back-to-work agreement included the conditions set forth in the Lutz letter. The issue was whether the company violated the controlling agreement(s) with respect to the 1963 vacations. The 'controlling agreement(s)' included the new collective bargaining contract as well as any back-to-work agreement."

The Seventh Circuit found that the award of the arbitrator was not arbitrary or beyond the authority of the arbitrator. In so doing, the Seventh Circuit acted within the scope of the controlling decisions issued by this Court and known as the Trilogy.[6]

In direct contradiction of its contention that the arbitrator made a "new contract" for the parties, the Company in its petition for writ of certiorari (p. 11, footnote 3) asserts that the arbitrator "rested his decision instead on the bargaining agreement."

This Court has clearly enunciated the function of the judiciary in reviewing an award of an arbitrator. This Court also has delineated the scope of authority of an arbitrator and determined that the arbitrator derives his authority from the collective bargaining agreement and so long as he contains himself within that authority, his decision is to be given full force and effect. In United

[6] United Steelworkers of America v. American Manufacturing Company, 363 U. S. 564; United Steelworkers of America v. Warrior and Gulf Navigation Company, 363 U. S. 574; United Steelworkers of America v. Enterprise Wheel and Car Corporation, 363 U. S. 593.

Steelworkers of America v. Enterprise Wheel and Car Corporation, 363 U. S. 593, 597, 598, 599, this Court pointed out as follows:

> "When an arbitrator is commissioned to interpret and apply the collective bargaining agreement, he is to bring his informed judgment to bear in order to reach a fair solution of a problem. This is especially true when it comes to formulating remedies. There the need is for flexibility in meeting a wide variety of situations.
>
> . . . . . .
>
> Arbitrators have no obligation to the court to give their reasons for an award. To require opinions free of ambiguity may lead arbitrators to play it safe by writing no supporting opinions. This would be undesirable for a well reasoned opinion tends to engender confidence in the integrity of the process and aids in clarifying the underlying agreement.
>
> . . . . . .
>
> Respondent's major argument seems to be that by applying correct principles of law to the interpretation of the collective bargaining agreement it can be determined that the agreement did not so provide, and that therefore the arbitrator's decision was not based upon the contract. The acceptance of this view would require courts, even under the standard arbitration clause, to review the merits of every construction of the contract. This plenary review by a court of the merits would make meaningless the provisions that the arbitrator's decision is final, for in reality it would almost never be final . . . It is the arbitrator's construction which was bargained for; and so far as the arbitrator's decision concerns construction of the contract, the courts have no business overruling him because their interpretation of the contract is different from his."

2. In This Case the Question of the Standard Which a Reviewing Court Is to Apply in Determining the Validity of an Arbitration Award Is Clear; Namely, Whether the Arbitrator Acted Within His Authority Under the Submission Agreement.

It is crystal clear from a reading of the opinion of the Seventh Circuit that the test applied by the Seventh Circuit in this case was whether or not the arbitrator acted within the scope of his authority under the submission agreement stipulated to and submitted by the parties at the arbitration hearing. The Seventh Circuit in line with the pronouncement in **United Steelworkers of America v. Enterprise Wheel and Car Corporation,** 363 U. S. 593, 597, that an arbitrator's award "is legitimate only so long as it draws its essence from the collective bargaining agreement . . .", found in this case that the award of Arbitrator Daugherty drew its essence from the submission agreement which, by its very nature, included the collective bargaining agreement.

In its attempt to illustrate disagreement among various Courts of Appeals on the subject of enforceability of arbitration awards, the Company, in its petition, cites several cases. It is submitted that there is no disagreement between the Courts of Appeals on the issue decided by the Seventh Circuit in this case. For example, on page 12 of its petition the Company argues in **Marble Products Co. of Georgia v. Local 155, United Stone and Allied Products Workers of America,** 335 F. 2d 468, 471 (1964), that the Fifth Circuit held that a court must look to the authority of the arbitrator in addition to the jurisdiction of the arbitrator. There is no disagreement between the Fifth Circuit and the Seventh Circuit on this point. The Seventh Circuit specifically found that Arbitrator Daugherty acted within the scope of his authority in rendering his award.

The Company, on page 12 of its petition, citing **United Steel Workers v. Timken Roller Bearing Company,** 324

F. 2d 738, incorrectly argues that the Sixth Circuit there held that the courts could not inquire into the question of whether the arbitrator exceeded his authority. The Sixth Circuit reached no such conclusion in that case and on the contrary found that the arbitrator whose opinion was under scrutiny acted within the scope of his authority and within the confines of the collective bargaining agreement. In the instant case, the Seventh Circuit made a similar finding with respect to the opinion and award of Arbitrator Daugherty.

CONCLUSION.

Because of the absence of any conflict between the decisions of the Seventh Circuit in this case and the Fourth Circuit in the **American Thread Company** case and because of the lack of any other valid reason for issuance of the writ sought by the Company, the Union prays that the Court deny the Company's petition for writ of certiorari.

Respectfully submitted,

HAROLD GRUENBERG,
Suite 905, Chemical Building,
721 Olive Street,
St. Louis, Missouri 63101,

JOHN M. SCHOBEL,
Suite 905, Chemical Building,
721 Olive Street,
St. Louis, Missouri 63101,

Attorneys for Local 7-644, Oil, Chemical and Atomic Workers International Union, AFL-CIO.

GRUENBERG, SCHOBEL & SOUDERS,
Of Counsel.